

**REMARKS**

Claims 1 to 19 are now pending in the application. Claims 1, 2, 18 and 19 are amended. The Applicant submits that no new subject matter is added.

**Claim Rejections – 35 USC §112**

Claim 1 states: "operating a meter displayed as at least three different statuses of an evolving symbol" [emphasis added]. Thus, the meter does not simultaneously display multiple statuses as objected to in the Office Action. It is displayed by an evolving symbol that has at least three different statuses. Accordingly, different values of the meter are displayed by different statuses of the evolving symbol. Thus, the Applicant submits that the rejection is improper and should be withdrawn.

Claims 3 and 4 are dependent from claim 2 (not claim 1 as stated in the Office Action) which states, among others, two types of events: "an event dependent of a game outcome" which is then further defined in claim 3, and "an event independent of a game outcome" which is further defined in claim 4. Therefore, the Applicant submits that neither of the mentions of the terms "the event" in claims 3 or 4 lack antecedent basis. On the other hand, nowhere, in claims 3 or 4, is there any mention of "predetermined symbol" or "predetermined combination of symbols", thus the Applicant does not understand the ground of rejection of these claims. The Applicant submits that it is the sole privilege of the Applicant to decide whether or not to further define, in a dependent claim, features or limitations named in a claim. Accordingly, the Applicant submits that the rejection is improper and should be withdrawn.

**Claim rejections – 35 USC §102****Regarding Clarke (US 4,669,731) or Stupak (US 5,695,402)**

Regarding claim rejections based on 35 U.S.C. §102, the Applicant submits that none of Clarke (US 4,669,731) or Stupak (US 5,695,402) teaches all the limitations of the claims. Thus, the allowance of the discussed claims is respectfully requested, based on the following arguments:

Clarke describes a game wherein a counter, or meter, tallies the losing outcomes and wherein upon occurrence of a winning outcome, the counter is reset to zero (0). Figure 1 of this reference shows that the meter is positioned over the reels of the line game. The meter is a simple counter counting the number of losing outcomes without any other variety or creativity in its display. This counter has no influence whatsoever on the symbols displayed on the lines, thus in the game structure, of the line game.

Stupak describes about the same thing as Clarke, except that the counter is displayed not only as a number but may be displayed by lighting up one of a series of numbers (Fig. 2) or using a pointer (Fig. 3). But these different displays do not influence in any way the symbols on the lines either.

Accordingly, neither of Clarke or Stupak teaches to display a meter “as at least three different statuses of an evolving symbol, said evolving symbol being part of said symbols organised according to said line game structure” [emphasis added], as described in claim 1 of the present application. In both these references, not only are the meters outside of the game structure of the line game, but they have no influence on the symbols that are part (displayed or not) of this game structure, in opposition to the meter described in claim 1 which, by being displayed as statuses of an evolving symbol, has an influence on at least this evolving symbol which is part of said symbols organized according to said line game structure.

This limitation is also present in claim 18 and claim 19: "said meter as at least three different statuses of an evolving symbol part of said symbols organised according to said game structure".

Since neither Clarke nor Stupak teaches or suggests this limitation, claims 1, 18 and 19 are not anticipated by either of these references. Accordingly, the Applicant submits that the rejection of these claims is improper and should be withdrawn. The Applicant requests the allowance of claims 1, 18 and 19.

#### **Regarding Tracy (US 5,280,909)**

Regarding claim rejections based on 35 U.S.C. §102, the Applicant submits that Tracy (US 5,280,909) does not teach all the limitations of the claims. Thus, the allowance of the discussed claims is respectfully requested, based on the following arguments:

Tracy describes a jackpot system enabling "the gaming machine displays and/or overhead display to display the jackpot-win value which has been established for the game cycle". "...the current jackpot value for a given progressive game cycle is also randomly established." The Applicant is a little confused on the motivation to reject the application claims based on this document since the reference does not in any way correspond to the explanation given about it in the Office Action. Nowhere in this reference is it taught or suggested to operate "a meter displayed as at least three different statuses of an evolving symbol".

Accordingly, Tracy fails to teach all the limitations of claims 1, 18 and 19 and thus the Applicant submits that the rejection is improper and should be withdrawn. Thus, claims 1, 18 and 19 should be allowed.

**Regarding Barrie (US 5,833,537)**

Regarding claim rejections based on 35 U.S.C. §102, the Applicant submits that Barrie (US 5,833,537) does not teach all the limitations of the claims. Thus, the allowance of the discussed claims is respectfully requested, based on the following arguments:

Barrie describes a game wherein, upon occurrence of a predetermined event, such as the occurrence of a "red ball" on a position in the game structure, a persistent indicator is displayed at this position. The persistent indicator may remain in place for at least one play. For each play during which the persistent indicator remains in place, the virtual reel bearing the indicator spin as usual and new symbols are displayed, even at the position of the persistent indicator. The persistent indicator remains in place for a predetermined number of plays or until a condition, as the occurrence of a "black ball" symbol, is met. The symbols of the game are not affected by the presence or absence of the persistent indicator, the indicator being used in the game to offer feature when a plurality of them achieve a criteria. In this game there is no meter and even if we were to read the reference as presenting a meter gathering the occurrence of the "red ball" and "black ball" symbols, and we were to consider the persistent indicators as evolving symbols, there still would only be two statuses for these indicators: present or absent, on or off.

Nowhere in Barrie is it taught to operate "a meter displayed as at least three different statuses of an evolving symbol, said evolving symbol being part of said symbols organised according to said line game structure". Thus, Barrie does not teach all limitations of claims 1, 18 and 19 and thus do not anticipate the claims. Accordingly, the Applicant submits that the rejections based on Barrie are improper and should be withdrawn. The Applicant requests the allowance of claims 1, 18 and 19.

**Regarding Englman (US 2003 01 57978)**

Regarding claim rejections based on 35 U.S.C. §102, the Applicant submits that Englmann (US 2003 01 57978) does not teach all the limitations of the claims. Thus, the allowance of the discussed claims is respectfully requested, based on the following arguments:

Since this document has already been discussed in previous Office Action, the Applicant will not repeat what has already been discussed. But would still like to remind the Examiner that in the Office Action of July 26 2007, the Examiner Benjamin William Lee, on page 5 had admitted that Englman does not anticipate claim 1: "However, Englman fails to disclose at least three different statuses of an evolving symbol". In fact, Englman only comprises two statuses: long plant and short plant. Therefore, Englman, by not teaching the limitation of operating "a meter displayed as at least three different statuses of an evolving symbol", does not teach all limitations of claim 1 and thus cannot anticipate this claim.

Accordingly, the Applicant requests that the rejections of claims 1, 18 and 19, which all comprises the limitation of "at least three statuses of an evolving symbol", are improper and should be withdrawn, while the claims should be allowed.

At this point, the Applicant wants to point that a POSITA as defined in the Office Action would easily see a big difference between a meter (which tallies or accumulates occurrences of an event or a symbol in a game), a display element which only indicates whether or not a feature is activated (such as the plant symbol in Englman which indicates to the player whether or not the multiplier feature is activated [long plant] or not [short plant]), a display element which displays the value of a meter by indicating this numerical value in a more interesting way (such as the displays described in Stupak) and the invention herein claimed. A POSITA, because of the high complexity of evaluating and controlling the influence of modifying, not only the appearance but also the effect on the chances of forming winning outcomes implying the different statuses of the evolving symbol, would not consider that a simple meter anticipates, or

even renders obvious the claimed invention. Since this influence is felt on how a payable is crafted by creating a fragile equilibrium between high and low prizes, high or low volatility and a hit rate that may create a game which will please not only the occasional players but also the experienced gamblers, the claimed invention is a far cry from a simple prize that is awarded when a condition is met by elements not influencing the hit rate of at least part of the winning outcomes.

The Applicant submits that all other claims rejected or otherwise allowable herein not discussed, are dependent upon claims judged allowable by the Applicant and thus should also be found allowable.

It is submitted, therefore, that claims 1 to 19 are in condition for allowance.

Reconsideration of the Examiner's rejections is respectfully requested. Allowance of claims 1 to 19 at an early date is solicited.

In the event that there are any questions concerning these remarks or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of this application may be expedited.

Respectfully submitted,

Gérald Duhamel

By:

/C. Marc Benoît/

C. Marc Benoît

(Reg. 50,200)

Agent of Record

Benoît & Côté, s.e.n.c.

Tel: (514) 658-4844, #210

Customer No.: 77130